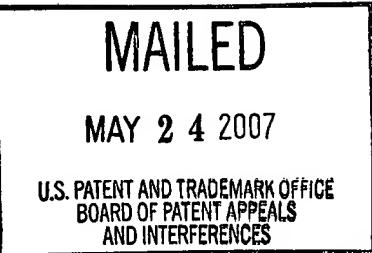


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN D. REED, JACK A. SMITH
and DANNY PINCKLEY

Application No. 09/855,388



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on March 19, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

In response to an Order Returning Undocketed Appeal mailed on August 9, 2005, the Examiner mailed a Notification of Non-Compliant Appeal Brief on August 26, 2006. Any response was due within thirty (30) days.

APPEAL BRIEF

It should be noted that the response to the Notification of Non-Compliant Appeal Brief was due within thirty (30) days, no later than September 26, 2005. Appellant's Supplemental Appeal Brief was filed on October 13, 2005. A review of the record reveals that no extension of time has been filed to date.

Further, the Supplemental Appeal Brief is not in compliance with the new rules under 37 CFR 41.37(c), which states:

* * *

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

* * *

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each claim involved in the appeal, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Correction is required. MPEP § 1205.03 states:

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new

brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

EXAMINER'S ANSWER

Evidence of Record

The Supplemental Examiner's Answer filed February 6, 2006, reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). In the Evidence Relied Upon (section 8, pg. 2 the Examiner does not identify all prior art cited to reject the claims. MPEP § 1207.02, the Evidence Relied Upon (section 8) should include:

(8) Evidence Relied Upon

A listing of evidence relied on (e.g., patents, publications, admitted prior art), and in the case of non-patent references, the relevant page or pages.

Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the Grounds of Rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- 1) hold the Supplemental Appeal Brief filed October 13, 2005, defective;

- 2) notify appellants to file a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);
- 3) consider the paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);
- 4) issue and mail a form PTOL-90 to citing all references and/or Evidence Relied Upon as required under 37 CFR 41.37; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES


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